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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Marriage of WALTER L. SHAW, JR.
and SONYA M. SHAW.

B251897

(Los Angeles County
Super. Ct. No. BD539356)

WALTER L. SHAW, JR.,

Respondent,

v.

SONYA M. SHAW,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stephen M. Moloney, Judge. Affirmed.

Honey Kessler Amado and Kristin L. Smith for Appellant.

Law Offices of Gregory R. Ellis, Gregory R. Ellis, and Natasha A. Bhushan for Respondent.

On October 25, 2012, the trial court entered a stipulated judgment of dissolution of the marriage of appellant Sonya M. Shaw and respondent Walter L. Shaw, Jr.¹ On December 20, 2012, the court entered a stipulated order modifying, among other things, the division of property made in the parties' stipulated judgment. Thereafter, Sonya filed a request for order to set aside the December 20, 2012 stipulated modification of the judgment, which the court denied. On appeal, Sonya argues the order denying her set aside request was erroneous on three grounds. First, she contends the court either lacked subject matter jurisdiction to enter the December 20, 2012 stipulated modification or that it acted in excess of its jurisdiction when it did so and that the modification accordingly is void or voidable. Second, Sonya contends the trial court applied the incorrect legal standard in denying her request for order to set aside. Finally, Sonya contends the court abused its discretion by failing to award her attorney's fees and costs under Family Code section 271.

We conclude that the trial court had subject matter jurisdiction to enter the stipulated modification of the judgment. We do not address Sonya's contention that the court acted in excess of its jurisdiction when it modified the judgment because she has failed to preserve that issue for appeal. We do address her remaining contentions, those concerning her requests for set aside and attorney's fees and costs. We conclude that the court did not abuse its discretion by denying either request and accordingly affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Sonya and Walter were married on May 19, 1990 and separated nearly 21 years later. They have one child, Stephan, who is an adult.² During their marriage, Walter hosted a nationally syndicated radio program. Sonya was the show's co-creator and executive producer for fifteen years but received no compensation. She relied on Walter

¹ Hereafter, the parties and their son will be referred to by their first names because they share a surname.

² Some documents in the record spell the son's given name as "Stephan" and others use the spelling "Stephen." We use "Stephan," the spelling used in the declaration the parties' son personally signed and submitted to the trial court.

as her sole source of income. Walter filed a petition for dissolution on February 9, 2011, and Sonya responded on March 21, 2011.

I. The Stipulation for Temporary Spousal Support and Attorney's Fees

In May 2011, the parties stipulated to temporary spousal support and attorney's fees. Among other things, the stipulation provided that, from May 15, 2011 until further order of the court, Walter would pay Sonya spousal support of \$9,078 per month. Walter was to deduct from this payment the full cost of Sonya's car insurance and approximately \$6,273.50 to cover half of the monthly expenses for the parties' shared residence on Kanan Road in Agoura Hills (the Kanan Residence). The stipulation also provided that Walter would pay \$15,000 toward Sonya's attorney's fees and costs, without prejudice to any further allocation of attorney's fees and costs in the matter.

II. The Marital Settlement Agreement and Stipulated Judgment

The parties signed a marital settlement agreement on July 24, 2012 and submitted it to the court as a stipulated judgment of dissolution on July 25, 2012. The court signed and entered the stipulated judgment on October 25, 2012, incorporating the marital settlement agreement.

The relevant terms of the stipulated judgment are as follows. From his separate property, Walter would pay Sonya a tax-free equalization payment of \$267,500 on August 1, 2012, or upon the sale of the Kanan Residence, whichever occurred first. The parties would split the proceeds of the sale of the Kanan Residence after an offset of Walter's \$150,000 separate property contribution. The parties would continue to reside in the Kanan Residence pending its sale and share equally in the monthly household expenses until August 1, 2012. If the Kanan Residence was not sold by August 1, 2012, Walter would pay the full \$267,500 equalization payment and Sonya would move out within seven days, after which time Walter would pay 100 percent of the household expenses.

Further, like the parties' May 2011 stipulation for temporary spousal support, the stipulated judgment provided that, commencing May 15, 2011, Walter would pay Sonya support of \$9,078 per month, less one-half of the monthly expenses for the Kanan

Residence (approximately \$6,273.50), resulting in an approximate monthly payment to Sonya of \$2,804.50.³ However, unlike the stipulation for temporary spousal support, the stipulated judgment also provided that Walter would pay Sonya 20 percent of any income he earned over \$25,000 per month as long as Sonya resided at the Kanan Residence or until August 1, 2012. Additionally, Walter would cease paying spousal support on August 1, 2012, or upon the sale of the Kanan Residence, whichever occurred first.

The stipulated judgment also provided that the parties would each receive a one-half share of the community funds in their bank and retirement accounts. The parties' retirements accounts had a combined value of approximately \$600,000. Further, the judgment provided that if Sonya settled any community debts, credit cards, or liabilities incurred during marriage in her name, Walter would reimburse her for one-half of the settled balance. The parties also were each awarded specified items of personal property.

III. The Informal Side Agreement Altering the Timing Provisions of the Stipulated Judgment

Before they signed the settlement agreement and stipulated judgment on July 24, 2012, Sonya and Walter informally agreed, through counsel, to alter some of its timing provisions (the informal side agreement). In letters exchanged by their counsel on July 13 and 18, 2012, Sonya agreed that, due to unspecified tax consequences, Walter would not have to pay her the \$267,500 equalization payment until after sale of the Kanan Residence. In return, Walter agreed that Sonya could continue to reside at the Kanan Residence beyond the August 1, 2012 deadline and that he would continue to make monthly support payments until she received the equalization payment or the house was sold, whichever occurred first.

IV. Walter's Motion to Modify Spousal Support and the Stipulated Modification of the Judgment

As of October 29, 2012 the Kanan Residence had not sold. On that date, four days after entry of the stipulated judgment, Walter filed a request for order to reduce his

³ Unlike the parties' May 2011 stipulation for temporary spousal support, the stipulated judgment did not address Sonya's car insurance.

spousal support from \$9,078 to \$5,982 per month based on an alleged reduction in his monthly income from \$25,000 to \$16,666.⁴ This proposed reduced spousal support payment would not cover Sonya's share of the monthly household expenses (\$6,273.50) that Walter was entitled to deduct. Walter accordingly requested that Sonya be responsible for the difference between \$6,273.50 and \$5,982.00 and that any portion of Sonya's household obligations that Walter paid above and beyond \$5,982.00 be deducted from the equalization payment.

Two days later, on October 31, 2012, Sonya's counsel filed a notice of withdrawal as attorney of record. While Sonya was unrepresented by counsel, she and Walter negotiated a stipulation to modify the October 25, 2012 stipulated judgment in order to resolve the issues raised by Walter's request to reduce spousal support.

The stipulation, which the parties signed on December 20, 2012, modified the judgment in several crucial ways. First, rather than making a tax-free equalization payment of \$267,500 from his own property, Walter would make an equalization payment of \$270,000 from the parties' retirement accounts. However, \$50,000 of that would go directly to Walter's accountant for purposes of paying the federal and state taxes resulting from the withdrawal of funds from the retirement accounts, which became Sonya's sole responsibility. Sonya would receive the remaining \$220,000 on December 21, 2012. Any additional taxes owed would be withheld from Sonya's share of the proceeds from the eventual sale of the Kanan Residence. Second, rather than an equal division of the parties' retirement accounts, as provided in the October 25, 2012 stipulated judgment, the stipulated modification awarded all monies remaining in those accounts to Walter as his sole and separate property. Third, Sonya waived any further right to spousal support, any distributions Walter owed her for monthly compensation

⁴ The record indicates that Walter's income had been reduced to \$16,666 per month before he signed the settlement agreement on July 24, 2012. In correspondence to Sonya's counsel, Walter's counsel stated that although Walter was "extremely concerned" about being able to make the \$9,078 monthly support payment on his reduced income, he nonetheless intended to sign the agreement because he wanted the case resolved.

over \$25,000, and all spousal support arrears. Fourth, whereas under the October 25, 2012 stipulated judgment Walter was required to reimburse Sonya for one-half of any community debts and obligations she settled, under the stipulated modification Sonya became solely responsible for those debts and obligations. Fifth, Sonya agreed to be solely responsible for financing the remainder of Stephan's college education. Sixth, Sonya agreed to vacate the Kanan Residence on or before January 31, 2013, and Walter was given sole authority to accept offers on the Kanan Residence. Finally, the stipulated modification altered the division of numerous items of personal property.

The stipulated modification further stated, "[e]ach party has carefully read this Stipulation and Order and is completely aware, not only of its contents, but also of its legal effect," and "[t]he parties represent that they are fully informed of their rights and obligations and that they entered into this Stipulation and Order voluntarily and without coercion or duress."

The court held a hearing on the stipulated modification on December 20, 2012, the day Walter's request for order modifying spousal support was scheduled to be heard. Sonya represented herself at the hearing. The court did not read the entire stipulated modification into the record but noted that it covered "many issues," including an equalization payment, the Kanan Residence, retirement accounts, spousal support, Stephan's college education, and personal property. The court summarized the parties' agreement in the stipulated modification that they had read and understood its contents and legal effect, were fully informed of their rights and obligations, and entered into the stipulated modification freely, voluntarily, and without coercion or duress.

At the request of Walter's counsel, the court swore Sonya and Walter as witnesses and questioned them about their understanding of and consent to the terms of the stipulation. The court characterized its inquiry as pertinent to "664.6 issues."⁵ The court made the following inquiry of Sonya:

⁵ Code of Civil Procedure section 664.6 states, "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may

“THE COURT: All right. And, Ms. Shaw, it says Sonya M. Shaw. Is that your signature?

“RESPONDENT SONYA SHAW: Yes, sir. Correct. [¶] . . . [¶]

“THE COURT: Did you sign it freely and voluntarily, Ms. Shaw?

“RESPONDENT SONYA SHAW: Yes, I did. [¶] . . . [¶]

“THE COURT: Ms. Shaw, you’re not represented by counsel. Did you carefully review the agreement?

“RESPONDENT SONYA SHAW: Yes, sir.

“THE COURT: And you understand the content?

“RESPONDENT SONYA SHAW: Yes, sir.

“THE COURT: And you agree to be bound by the terms?

“RESPONDENT SONYA SHAW: Yes, sir.”

Walter similarly confirmed he signed the stipulated modification freely and voluntarily, understood what he was signing, reviewed the matter in detail with his counsel, and understood he was bound by its terms.

The court found Sonya and Walter understood the content of the stipulated modification and entered into it freely and voluntarily. The court signed and entered the stipulated modification as its order on December 20, 2012, and took Walter’s request for order to reduce spousal support off calendar.

V. Sonya’s Request for Order to Set Aside the Stipulated Order Modifying the Judgment

A. *The Moving Papers and Supporting and Opposing Declarations*

1. *Request for Order to Set Aside*

Sonya retained new counsel in March 2013. On April 2, 2013, she filed a request for an order to set aside the December 20, 2012 stipulated modification pursuant to Family Code section 2122. In particular, Sonya asked the court to reinstate the terms of

enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

the October 25, 2012 stipulated judgment. She requested, among other things, payment of the remaining balance of the equalization payment, plus interest owed to her under the terms of the stipulated judgment; reimbursement of any taxes, interest, and penalties incurred for early withdrawal of funds from the parties' retirements accounts; one-half of the proceeds of the parties' retirement accounts; an accounting of the parties' bank and retirement accounts and immediate payment of all funds owed to her from those accounts; disbursement of one-half of the sales proceeds of the Kanan Residence after offset of Walter's separate property contribution; one-half of a \$91,000 credit card debt in Sonya's name that she had settled; and attorney's fees and costs.

2. Sonya's Declaration

In support of her request for order, Sonya submitted a declaration in which she claimed she had entered into the December 20, 2012 stipulated modification under duress. She stated that in early November 2012, Walter ceased paying her monthly spousal support and thereby curtailed her sole source of income. At that time, Walter had not made the equalization payment, Sonya had not received her one-half share in the parties' bank and retirement accounts, and the Kanan Residence had not sold. Sonya claimed that as of November 2012, she thus had no income, no assets, no source of liquid funds, and was "utterly destitute" and "completely panic stricken." She was not represented at that time and could not afford to retain counsel.

According to her declaration, Sonya met with Walter three times. At their first meeting, Walter told her that unless his request for modification of spousal support were granted, she would no longer receive cash support and he would deduct a portion of her daily living expenses from the equalization payment. Sonya asked for her equalization payment, but Walter claimed he had no money to pay her. He could not explain why he had agreed to make the equalization payment if he could not afford it. At their next meeting, Sonya proposed that Walter pay her from his share of the retirement accounts. Walter was reluctant to do so but agreed to consult with his attorney and accountant. At their third meeting, Walter offered to make a lesser equalization payment of \$220,000 if Sonya relinquished her interest in the retirement funds, granted him sole control over sale

of the Kanan Residence, and moved out of and ceded access to the home by January 31, 2013. He told her to call his attorney to work out the details.

Sonya telephoned Walter's counsel two days later. Counsel told her the terms proposed by Walter were non-negotiable. Sonya had \$38.00 in her checking account at that time. She claimed she "was in dire need of funds before month's end and the Thanksgiving holiday was just around the corner, and [she] wanted to observe that and have a holiday meal with [her] son." Sonya told Walter's counsel that she wanted payment by December 21, 2012.

Walter's counsel prepared the stipulated modification and emailed it to Sonya for her review. Sonya "looked [the papers] over to the best of [her] knowledge" and signed the papers the same day without having an attorney (or anyone else) review them. She did not know that she could have requested attorney's fees to hire counsel. Sonya claimed she never fully comprehended the stipulation's terms and conditions.

At the December 20, 2012 hearing, Sonya "felt helpless without representation," "squeezed up against the wall," and "very uncertain and intimidated." Her "nerves were on edge" and she "want[ed] the whole experience just to be over."

On December 21, 2012, Walter gave Sonya a cashier's check for \$220,000. With those funds she eventually retained counsel and subsequently learned that under the stipulated modification, she would receive "essentially what [was] one-third of what was agreed to" in the October 25, 2012 judgment. Prior to consulting with her attorney, she did not understand she waived her interest in the parties' retirement accounts, absorbed both her own and Walter's tax penalties for the withdrawal, and agreed to be solely responsible for the credit card debt she incurred during the marriage. She likewise did not understand she did not have to agree to the reduced equalization payment.

3. Stephan's Declaration

The parties' son, Stephan, also filed a declaration. Stephan described Sonya in November 2012 as "under extreme stress," "struggling," experiencing "extreme anxiety," "beside herself," "withdrawn," and "at a breaking point" because of Walter's delinquent payments and her resultant financial situation. Stephan stated that Walter was "bullying"

Sonya and “trying to press his desires on her,” and that Sonya “felt extremely pressured to accept.”

4. *Walter’s Declaration*

Walter filed a declaration in opposition to Sonya’s set aside request. Prior to his request for order to reduce spousal support, Walter paid Sonya spousal support pursuant to the stipulated judgment: \$9,078.00 per month, less one-half of the costs of maintaining the Kanan Residence (\$6,273.50), because Sonya wished to continue living there. Walter anticipated making the equalization payment from the proceeds of the sale of the Kanan Residence. When the house did not sell by August 1, 2012, Walter failed to make the equalization payment. However, based on the parties’ informal side agreement, Walter continued paying Sonya monthly spousal support until he made the equalization payment, and Sonya continued to live in the Kanan Residence.⁶

Walter explained that after the stipulated judgment was submitted to the court, but before the court entered it, his salary was reduced. Because he could no longer afford to make the \$9,078 spousal support payments, he filed his request for order to reduce spousal support.

Walter stated that Sonya approached him to negotiate so that she could receive the equalization payment by December 21, 2012. He did not want to make the equalization payment from their retirement accounts because of the tax implications. Walter claimed he never told Sonya that he planned to deduct anything from the equalization payment or that the only way she would receive the equalization payment was to accept a lesser amount of \$220,000. Rather, Sonya proposed that sum and said she was willing to take it out of her portion of the retirement accounts and pay the taxes so she could receive the payment by December 21, 2012. Walter did not want to go through the trouble and

⁶ In both her initial and reply declaration, Sonya discusses Walter’s failure to make the equalization payment on August 1, 2012, as required by the terms of the parties’ initial settlement agreement, which became the October 25, 2012 stipulated judgment. Her declarations ignore the parties’ informal side agreement. The parties did not challenge enforceability of the informal side agreement in the trial court and do not address the matter on appeal.

expense of making an early withdrawal without receiving anything in exchange, so he proposed through counsel, and Sonya agreed, that Sonya waive her remaining interest in the retirement accounts. According to Walter, “Sonya asked for the \$220,000 and received it on her own terms and conditions.” Walter also claimed Sonya consulted with her former attorney throughout her negotiations with him.

5. *Declaration of Walter’s Counsel*

Walter’s counsel also submitted a declaration in support of Walter’s opposition. Counsel stated that on November 29, 2012 she received a call from Sonya’s former counsel, who indicated she was “back informally.” They discussed Walter’s request to modify spousal support. On December 5, 2012, Walter’s counsel telephoned Sonya’s counsel and left a message requesting that she call back. Walter’s counsel had no further contact with Sonya’s former counsel, but believed Sonya continued to consult with her.

Walter’s counsel stated she first discussed the stipulated modification directly with Sonya on December 14, 2012. Sonya relayed to counsel the settlement offer, the terms of which were: Sonya wanted \$220,000 from the retirement accounts and she wanted Walter to be responsible for half of the tax consequences associated with the withdrawal; Sonya would accept responsibility for the debts she incurred during marriage as well as Stephan’s support and schooling; Sonya would waive any spousal support arrears and any bonus distribution; and Walter would have first choice of furniture and furnishings, as well as the authority to accept offers on the Kanan Residence. Sonya also agreed to vacate the Kanan Residence by January 31, 2013 and to pay Walter \$200 toward the household expenses each day she overstayed. Counsel did not tell Sonya the terms were non-negotiable but did state that she would need to discuss the terms with her client Walter.

Counsel called Walter that same day. He agreed with all of Sonya’s proposed terms except those pertaining to the tax consequences for early withdrawal of retirement funds. Counsel called Sonya on December 17, 2012 to relay this information to her, and Sonya agreed to bear full responsibility for the tax consequences. After meeting with his accountant, Walter proposed that he keep any balance remaining in the retirement

accounts after the withdrawal. Counsel relayed this counter-offer to Sonya on December 18, explaining to her that it meant she would not receive any interest in the retirement accounts. Sonya stated she would agree to that so long as she received the equalization payment by December 21, 2012. Counsel relayed that information to Walter, prepared the agreement, and emailed it to Sonya for her review.

6. *Sonya's Reply Declaration*

Sonya filed a reply declaration stating that she was not represented by counsel when the dissolution was finalized and the judgment was entered in October. She reiterated that she would not have appeared at the December 20, 2012 hearing in pro. per. had she known she could have sought attorney's fees. At that hearing, she was "in no mind to think clearly or consider options" because she was "in a state of shock, helpless, confused, numb and emotionally detached from the situation." Because she was not represented and unaware of her rights, she "was fearful of saying or doing anything that wasn't proper court protocol." Further, no one at the hearing explained to her the significance of the modification, that she was losing "nearly two-thirds" of her entitlement under the October 25, 2012 stipulated judgment, or that she could have sought attorney's fees to pay for an attorney to review the stipulation.

B. Hearing on Sonya's Set Aside Request and Findings and Order after Hearing

The court held a hearing on Sonya's request to set aside the stipulated modification on May 23, 2013. The court stated it "read everything you filed" and proceeded to relate a detailed procedural history of the case up to the point that Sonya filed her request to set aside. The court then reiterated that it reviewed the documents filed in connection with that request and read into the record excerpts from the declarations submitted by Sonya and Walter. The court noted that Walter's filings included a transcript of the December 20, 2012 hearing, which it had reviewed. The court read into the record portions of that transcript, including the colloquies with Sonya and Walter in which both parties expressly affirmed that they understood the contents of

the stipulated modification, signed it freely and voluntarily, and agreed to be bound by its terms.

The court did not take any new testimony but permitted counsel for both sides to present argument. Sonya's counsel argued that the terms of the stipulated modification were exceedingly unfavorable to her, to the point that it was "unconscionable" and constituted "extortion." He further noted that Stephan witnessed Sonya's "depression" and "duress," and suggested that the court's inquiry of Sonya at the December 20 hearing might have been more thorough if the court had read the stipulated modification into the record and "was really aware of what was really going on." Counsel asked the court to employ its equitable powers to return the parties to their pre-stipulated modification status quo.

Walter's counsel characterized the negotiations between Walter and Sonya much differently. Counsel contended that Sonya initiated the negotiations and made the choice to accept Walter's terms so she could receive the \$220,000 by December 21. Counsel further argued that Sonya had no evidence that Walter intentionally used threats or pressure to coerce her into signing the stipulated modification, and reiterated that Sonya chose to approach Walter to negotiate because "[s]he wanted her money, and she wanted it right away." Counsel also emphasized that she (counsel) specifically asked the court at the December 20 hearing to ensure that Sonya understood the terms of the stipulated modification and that "she was not under duress," and argued that the answers Sonya gave at that time demonstrated just that.

At the conclusion of argument, the court told the parties it had "listened carefully" and "taken notes." Indeed, the court proceeded to summarize the parties' arguments, stating that Sonya claimed to be unaware of what she was giving up, believed the agreement was one-sided and constituted extortion, and asked the court to use its equitable powers to remedy the situation. The court stated that Walter claimed the stipulated judgment was bargained for. The court characterized the dispute as "a situation where a family court goes through and tries to determine what happened in a

case,” explaining “[t]hat is why I gave you the timeline” at the beginning of the hearing. The court also emphasized, again, that it “read the transcript.”

The court indicated that at the previous hearing, it went beyond what was required by Code of Civil Procedure section 664.6. It stated that it “tried to summarize the general terms” of the stipulated modification for Sonya, and asked her questions to ensure that she understood its contents, signed it freely and voluntarily, and was not coerced. The court also indicated it was “just simply not clear” whether and to what extent Sonya may have had counsel during the negotiations process. As to its findings, the court stated, “So my first finding for the statement of decision . . . will be that the court finds that this agreement is enforceable under Code of Civil Procedure section 664.6, and that’s based upon the transcript of the hearing as set forth as an exhibit in this case . . . transcript of December 20, 2012. I think I read that verbatim into the record. So that is my first finding - - is enforceable under 664.6.” The court also found that Walter did not breach any fiduciary duty to Sonya but denied his request for attorney’s fees on equitable grounds. The court ordered Walter’s counsel to prepare the statement of decision Sonya requested.

C. Sonya’s Subsequent Filings

1. Statement of Principal Converted Issues

On June 3, 2013, Sonya filed a “Statement of Principal Controverted Issues” in which she asked the court to resolve 33 issues she believed remained outstanding. Approximately 15 of those issues pertained directly to her duress claim. They included “Respondent was in dire financial circumstances when she was presented with the proposed Stipulation/Order for Modification of the Judgment in November, 2012,” “Respondent agreed to the terms of the Stipulation/Order for Modification of the Judgment entered December 20, 2012 under duress,” “Respondent believed she had no option but to accept the terms of the Stipulation/Order to Modify the Judgment as presented by Petitioner,” and “Respondent’s statements on the record at the hearing on December 20, 2012 that she ‘understood’ the agreement and verification of her signature on the Stipulation/Order to Modify the Judgment did not equate to a full, knowing,

voluntary and consensual waiver of her rights under the Stipulated Judgment of October 25, 2012.”

Walter filed an objection on June 14, 2013. He objected on the grounds that Sonya “submitted re-argument which should not be included in a request for statement of decision.” He contended that “[o]nly an explanation of the factual and legal basis for decision is required on controverted issues.” He specifically objected to 28 of Sonya’s asserted “principal controverted issues,” and stated that “The court found that Respondent’s statements on the record at the hearing on December 20, 2012, confirmed that when she signed the Stipulation and Orders to Modify the Judgment entered December 20, 2012, she entered the agreement freely and voluntarily and that she understood the content of the agreement.”

The court reviewed both parties’ filings and issued a minute order on June 25, 2013. In that minute order, the court stated that its findings were “set forth in the Official Court Reporter’s Transcript of May 23, 2013,” which the court indicated was appropriate under Code of Civil Procedure section 632 due to the fact that the hearing was shorter than one calendar day and was not a trial in any event. The court continued, “the Principal Converted Issues submitted by the Respondent were addressed on the record in the Court’s ruling on May 23, 2013. The Court set forth on the record a detailed summary of the allegations of both the Petitioner and the Respondent in the moving and responsive papers. The Court then issued an Order addressing the Principal Controverted Issues set forth in the moving papers and in the Statement of Principal Controverted Issues set forth on June 3, 2013 by the Respondent.” The court ordered counsel for both parties to obtain a copy of the official transcript of the May 23, 2013 hearing. It further ordered Walter’s counsel to prepare an Order after Hearing and submit it to Sonya’s counsel for her review.

2. Objections to Proposed Statement of Decision

On July 5, 2013, Sonya filed “Objections to Proposed Statement of Decision by Respondent Under C.C.P. § 634 and C.R.C., rule 3.1590(g).” She indicated that she “treats the Court’s ruling of June 25, 2013 as the Court’s determination that its prior oral

tentative decision would become its proposed Statement of Decision under *California Code of Civil Procedure* §634 and *Cal. Rules of Court*, Rule 3.1590(c),” a statement of decision to which she objected. She submitted that nine issues remained unresolved, six of which pertained to her claim of duress.

The court issued a minute order addressing Sonya’s filing on July 16, 2013. The court noted that despite the document’s title, “Respondent did not set forth objection [*sic*] but instead listed eight unresolved issues.” The court stated that it addressed all of Sonya’s issues at the hearing on May 23, 2013. “Nevertheless the Court will address unresolved issues so that there is a record of the Court’s findings.”

As is particularly pertinent here, the court found that it “addressed the issue of whether the Respondent entered into the Stipulation on December 20, 2012 under duress and whether duress was sufficient to set aside the Judgment. Counsel are referred to the Reporter’s transcript of 12-20-2012 and 05-23-2013.” The court further found that “[t]he Court found the Respondent freely and voluntarily entered into the Stipulation,” “[t]he Court found that the Respondent understood the terms of the agreement and freely and voluntarily entered into the agreement,” “[t]he Court questioned the Respondent on 12-20-2012 and found the agreement enforceable pursuant to Code of Civil Procedure Section 664.6,” and “[t]he Court found that the Respondent agreed to the terms in the Stipulation freely and voluntarily.” The court reiterated that it ruled on the issues Sonya raised and ordered Walter’s counsel to prepare “a Findings and Order after Hearing consistent with the Court’s findings on 05-23-2013 as further set forth on 6-25-2013 and in this Minute Order.”

Walter’s counsel prepared the findings and order. After some back and forth, Sonya’s counsel approved it as to form. Sonya’s counsel signed the findings and order on August 8, 2013. The court signed the findings and order on August 12, 2013.

Sonya timely appealed on October 10, 2013.

DISCUSSION

I. Jurisdiction

Sonya contends the court lacked subject matter jurisdiction to enter the December 20, 2012 stipulated modification of the October 25, 2012 stipulated judgment. She alternatively argues that even if the court had subject matter jurisdiction, it acted in excess of jurisdiction when it entered the modification. Whether the court had jurisdiction to enter the stipulated modification is a question of law we review independently. (*In re Marriage of Jensen* (2003) 114 Cal.App.4th 587, 592.) We conclude that the court had subject matter jurisdiction to enter the December 20, 2012 stipulated modification of the judgment, and that Sonya forfeited her challenge to the modification as an act in excess of the court's jurisdiction by failing to raise the issue in the trial court.

A. *The Trial Court Had Subject Matter Jurisdiction to Enter the December 20, 2012 Stipulated Modification of the Judgment*

"The term 'jurisdiction,' 'used continuously in a variety of situations, has so many different meanings that no single statement can be entirely satisfactory as a definition.' [Citation.] Essentially, jurisdictional errors are of two types." (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660 (*American Contractors*).) "Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.' [Citation.] When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void," and "thus vulnerable to direct or collateral attack at any time." [Citation.]) (*Ibid.*) Therefore, a party may attack an order as void for lack of subject matter jurisdiction for the first time on appeal. (See, e.g., *In re Marriage of Jensen, supra*, 114 Cal.App.4th at p. 593; *Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1239 (*Rochin*).) We accordingly consider Sonya's challenge to the court's subject matter jurisdiction, even though she first raised the issue on appeal.

"The general rule is that once a judgment has been entered, the trial court loses its unrestricted power to change that judgment." (*Rochin, supra*, 67 Cal.App.4th at p. 1237.)

While a family law court retains jurisdiction to modify the support and custody provisions of judgments of dissolution (see, e.g., Family Code, §§ 3022, 3087, 3088, 3651), its jurisdiction to modify property divisions is far more limited. (See, e.g. *Tarvin v. Tarvin* (1986) 187 Cal.App.3d 56, 60.) ‘The sole remedy with respect to a judgment adjudicating a property division is a timely set-aside motion under [Code of Civil Procedure section] 473 [, subdivision] (b)^[7] . . . , a timely appeal, or, after the time for [Code of Civil Procedure section] 473 [, subdivision] (b) relief expires, a [Family Code section] 2120 et seq.^[8] set-aside proceeding on statutorily-prescribed grounds and within statutorily-prescribed time limits. . . .’ [Citations.]” (*In re Marriage of Thorne and Raccina* (2012) 203 Cal.App.4th 492, 499 (*Thorne and Raccina*).)

Neither the parties nor the court relied on either Code of Civil Procedure section 473 or Family Code section 2122 in order to modify the property division of the October 25, 2012 judgment. Instead, the parties stipulated to a modification of the judgment in response to Walter’s request for order to reduce spousal support, and the court purported to modify the judgment under Code of Civil Procedure section 664.6. Sonya accordingly contends the court lacked subject matter jurisdiction to modify the judgment pursuant to the parties’ stipulation. We disagree.

On December 20, 2012, when the court entered the stipulated modification of the judgment, the parties had statutory procedures available to them to seek a set aside or other modification of the judgment. (*Thorne and Raccina, supra*, 203 Cal.App.4th at p. 499.) An aggrieved party may bring a motion under Code of Civil Procedure section 473 within six months of entry of judgment or a motion under Family Code section 2122

⁷ Code of Civil Procedure section 473 gives courts discretion to, “upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc., § 473, subd. (b).)

⁸ For example, Family Code sections 2121 and 2122 give courts discretion to “on any terms that may be just, relieve a spouse from a judgment or any part or parts thereof, adjudicating support or division of property” on grounds of actual fraud, perjury, duress, mental incapacity, mistake, or failure to comply with statutory disclosure requirements. (Fam. Code, §§ 2121, subd. (a) & 2122.)

within one to two years of entry of judgment, depending on the grounds. (Code Civ. Proc., § 473, subd. (b); Fam. Code § 2122.) On December 20, 2012—less than two months after entry of the October 25, 2012 judgment—the parties had ample time to seek relief under those statutes. Because procedural mechanisms were available to the court and the parties to modify the property divisions of the judgment, the trial court clearly had fundamental jurisdiction—that is, power to hear or determine the case and authority over the subject matter or the parties—to do so. (*American Contractors*, *supra*, 33 Cal.4th at p. 662 [trial court’s failure to follow proper procedural requirements did not affect the court’s fundamental jurisdiction].)

Sonya relies on *Thorne and Raccina* to argue that the court lacked subject matter jurisdiction to modify the judgment. That case is distinguishable. In *Thorne and Raccina*, the wife sought a modification of the property division in their judgment of dissolution more than 11 years after the judgment was entered. (*Thorne and Raccina*, *supra*, 203 Cal.App.4th at pp. 496-497.) The court of appeal held that the trial court lacked subject matter jurisdiction to modify the judgment because the time in which to bring motions under Code of Civil Procedure section 473 and Family Code 2122 had long since expired, and the judgment had become final. (*Id.* at p. 500.) Here, by contrast, the parties sought a modification within the statutory time limit. The court therefore retained subject matter jurisdiction during that time.⁹

⁹ Courts may also retain jurisdiction to modify or alter a marital dissolution judgment if the judgment “contain[s] an express reservation of jurisdiction authorizing the court to subsequently modify it. [Citations.]” (*Thorne and Raccina*, *supra*, 203 Cal.App.4th at p. 500.) The October 25, 2012 stipulated judgment included the following contradictory provisions: (1) “Except where this Stipulated Judgment expressly provides that the Court does not reserve jurisdiction, this Court reserves jurisdiction to make such further orders, Stipulated Judgments and decrees as may be necessary or convenient to enforce, but not to alter or modify, the terms and provisions of this Stipulated Judgment;” and (2) “The terms of this Stipulated Judgment shall not be modified except by another signed writing between the Parties or further order of the Court.” Because the parties did not address these provisions in their briefing, we requested supplemental briefing. The parties each unsatisfactorily attempted to harmonize these provisions. We need not

B. Sonya Has Forfeited Her Challenge to the Court's Entry of the Stipulated Modification as an Act in Excess of its Jurisdiction

The phrase “lack of jurisdiction” is not limited to a lack of fundamental jurisdiction. (*American Contractors, supra*, 33 Cal.4th at p. 661.) Lack of jurisdiction “may also ‘be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense [as is the case here], it has no “jurisdiction” (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.’ [Citation.] ‘[W]hen a statute authorizes [a] prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction.’ [Citation.] When a court has fundamental jurisdiction, but acts in excess of its jurisdiction, its act or judgment is merely voidable. [Citations.] (*Ibid.*) In contrast to an attack on an order or judgment as void for lack of subject matter jurisdiction, which may be raised for the first time on appeal “““an act in excess of jurisdiction is valid until set aside, and parties may be precluded from setting it aside by such things as waiver, estoppel, or the passage of time.””” (*People v. Lara* [(2010)], 48 Cal.4th [216,] 225 [].)” (*Kabran v. Sharp Memorial Hospital* (2015) 236 Cal.App.4th 1294, 1306 (*Kabran*).)

Sonya contends that even if the court had subject matter jurisdiction to enter the December 20, 2012 stipulated modification of the judgment, that order is voidable as an act in excess of the court’s jurisdiction because the court failed to rely on Code of Civil Procedure section 473 or Family Code section 2122, which were the only statutorily prescribed procedures by which the court could substantially alter the property rights of the parties. However, although Sonya had ample opportunity, she failed to raise this issue in the trial court. “[A] claim that a trial court acted in excess of its jurisdiction, as opposed to lacking fundamental jurisdiction to act, is subject to forfeiture by failing to preserve it in the trial court.’ (*People v. Taylor* (2009) 174 Cal.App.4th 920, 937-38 [].)”

construe or harmonize them here because we resolve the jurisdictional challenges on other grounds.

(*Kabran, supra*, 236 Cal.App.4th at p. 1306.) Because Sonya failed to preserve this issue for appeal, we conclude that it is forfeited.¹⁰

II. Motion to Set Aside

A. Standard of Review

As a general matter, we review a motion to set aside the stipulated modification for abuse of discretion. (*In re Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334, 1346; *In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682, 686 (*Rosevear*).) ““The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” [Citations.] The burden is on the complaining party to establish abuse of discretion. [Citations.] The showing on appeal is insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion.” (*Rosevear, supra*, 65 Cal.App.4th at p. 682.) However “the discretion of a trial court is not an uncontrolled power.” (*Ibid.*) “A court must know and consider all the material facts and legal principles essential to an informed, intelligent, and just decision in the particular case before it.” (*Id.* at p. 683.) Thus, a trial court abuses its discretion if its ruling contravenes uncontradicted evidence. (*Ibid.*)

Sonya agrees that the abuse of discretion standard applies to motions to set aside. She contends that de novo review is warranted here, however, because the trial court “did not resolve any material factual conflicts necessary to its decision” and improperly “invok[ed] its findings under section 664.6 to decide [her] subsequent set-aside motion under Family Code section 2122.” We disagree.

¹⁰ Citing *In re Marriage of Jackson* (2006) 136 Cal.App.4th 980, 989 and *American Contractors, supra*, 33 Cal.4th at p. 661, Sonya contends that a party can attack a voidable judgment for the first time on appeal where there are unusual circumstances such as a substantial procedural irregularity or compelling policy considerations. Both cases are inapposite because the parties in those cases challenged the courts’ purported acts in excess of jurisdiction in the trial court. (*In re Marriage of Jackson, supra*, 136 Cal.App.4th at p. 986; *American Contractors*, 33 Cal.4th at p. 659.)

Although Sonya is correct that Walter did not provide a point-by-point refutation of her declaration, his declaration, along with that of his attorney, offered an alternative version of the facts that contradicted Sonya's declaration. So too did Sonya's in-court statements regarding the nature of her acquiescence to the stipulated modification. Sonya argues that her in-court statements did not inherently resolve the issues of coercion and duress, but even if that is true, the trial court was entitled to consider those statements – and Sonya's demeanor in making them – when determining whether Sonya agreed to the stipulated modification under duress. “It is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) Accordingly, we follow the general rule and review only for abuse of discretion.

B. Analysis

Sonya contends that her declaration stated a prima facie case of duress “entitling her to set aside under Family Code section 2122,” because “Walter did not contradict in the set-aside proceeding any of the . . . facts alleged by Sonya.” Sonya further contends that the court erred in considering and relying “solely” on the statements she made at the December 20, 2012 hearing as a basis for concluding that she understood and freely and voluntarily agreed to the stipulated modification. In her view, “the trial court here expressly and erroneously conflated” the objective inquiry into consent required by Code of Civil Procedure section 664.6 and the subjective inquiry into consent required by Family Code 2122, subdivision (c). We are not persuaded that the trial court abused its discretion.

Sonya brought her request for order to set aside the stipulated modification of the judgment pursuant to Family Code section 2122. This provision permits a family court to set aside a judgment in whole or in part on several grounds, including duress. (Fam. Code, § 2122, subd. (c).) Duress “““includes whatever destroys one’s free agency and

constrains [her] to do what is against [her] will, [and] may be exercised by threats, importunity or any species of mental coercion [citation]. . . .” [Citation.] It is shown where a party ‘intentionally used threats or pressure to induce action or nonaction to the other party’s detriment. [Citation.]’ [Citations; fn. omitted.] The coercion must induce the assent of the coerced party, who has no reasonable alternative to succumbing.” (*In re Marriage of Baltins* (1989) 212 Cal.App.3d 66, 84 (*Baltins*); see also *In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1523.) “[T]he existence of duress always depends upon the circumstances.” (*Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1078.) Duress is determined by an inquiry into the “threatened person’s mind.” (*Baltins, supra*, 212 Cal.App.3d at p. 84.)

At the hearing on Sonya’s Family Code section 2122 motion, the court indicated several times that it reviewed all of the materials before it, including the competing declarations, counsel’s arguments, and the procedural history of the case. That procedural history included Sonya’s affirmations at the December 20, 2012 hearing that she carefully reviewed the stipulated modification, understood its content, agreed to be bound by its terms, signed the stipulated modification, and did so freely and voluntarily. The court made those inquiries of Sonya to ensure that she expressly consented to the material terms of the parties’ settlement. (*Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732.) However, while the court was prudent to do so, it was not required by Code of Civil Procedure section 664.6 to engage in a colloquy with the parties regarding their comprehension and voluntary entry into the stipulated modification. It was obliged only to ensure that both Sonya and Walter personally signed the document. (See *J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 985; see also *Levy v. Superior Court* (1995) 10 Cal.4th 578, 580, 585.) The signature requirement alone “protects the parties against hasty and improvident settlement agreements by impressing upon them the seriousness and finality of the decision to settle,” “minimizes the possibility of conflicting interpretations of the settlement,” “protects parties from impairment of their substantial rights without their knowledge and

consent,” and “tends to ensure that the settlement is the result of their mature reflection and deliberate assent.” (*Levy v. Superior Court, supra*, 10 Cal.4th at p. 585.)

The court’s further inquiries at the December 20, 2012 hearing demonstrate that it “took extraordinary pains to ensure that [Sonya]’s agreement was freely, knowingly and voluntarily given.” (*Rosevear, supra*, 65 Cal.App.4th at pp. 685-686.) Of course, as Sonya insinuates in her “Statement of Principal Controverted Issues” and subsequent objections, the court could have probed her more thoroughly. Yet we cannot fault the court for not making additional unnecessary findings, particularly in light of what appear from the transcript to be Sonya’s unequivocal answers to the court’s questions. (See *id.* at p. 686 [“If she had truly felt coerced or pressured to agree at the time of the settlement conference, surely some indication would appear in the reporter’s transcript.”].) Its optional inquiries before entering the stipulated modification constituted a subjective inquiry into Sonya’s state of mind, afforded Sonya an opportunity to provide the court with a fuller picture of the circumstances surrounding the stipulated modification, and gave the court the opportunity to evaluate Sonya’s demeanor and credibility.

Sonya’s responses at the December 20, 2012 hearing constitute substantial evidence contradicting the claims in her declaration that she felt coerced or pressured to agree to the stipulated modification. The court was entitled to rely on those responses when evaluating Sonya’s claim of duress months later. Although Sonya claims the court relied “solely” on her answers to deny her request to set aside, the transcript of the hearing on her motion indicates that the court considered all of the materials before it, including the competing declarations describing the parties’ negotiations. The court’s responses to Sonya’s “Statement of Principal Controverted Issues” and “Objections to Proposed Statement of Decision” refer her to the entire transcript of the hearing on the motion to set aside, suggesting that the court found important not only its explicit finding stated in terms of Code of Civil Procedure section 664.6 but also its robust discussion of the procedural history and consideration of filings pertinent to Sonya’s motions. Even if we were to read the court’s findings mentioning Code of Civil Procedure section 664.6 in isolation, and conclude the court did rely exclusively on Sonya’s December 20, 2012

testimony, we would not conclude it abused its discretion in doing so under the circumstances. The court asked Sonya direct questions targeted at ascertaining her state of mind, observed and interacted with her, and was in the best position to assess her credibility as a witness. The findings it made after that colloquy were highly probative as to her future claim of duress.

Sonya attempts to analogize her case to *Baltins*, in which the Court of Appeal affirmed the trial court's ruling setting aside a dissolution judgment on duress grounds. We are not persuaded. In *Baltins*, husband physically abused wife, intimidated wife into dismissing her counsel, threatened to file for bankruptcy, and threatened to cease contact with the couple's child. (*Baltins*, *supra*, 212 Cal.App.3d at pp. 77, 85.) The husband then prepared a highly inequitable marital settlement agreement, which wife, whose friends described her as "emotionally unable to fight" and "extremely depressed and distraught" (*id.* at p. 78), signed without the advice of counsel (*id.* at p. 79). Later, husband obtained a default judgment that incorporated the terms of the marital settlement agreement. (*Id.* at p. 74.) Despite the inequitable nature of the stipulated modification in this case, the indicia of duress are not comparable to those in *Baltins*. Nothing in the record suggests that Walter physically or emotionally abused Sonya, intentionally interfered with her ability to obtain legal assistance, pressured her into taking immediate action regarding the stipulated modification, or used Stephan as a bargaining chip. The court had before it competing declarations describing the parties' negotiations, as well as Sonya's previous assurances that she understood the terms of the stipulated modification and signed it voluntarily. It was not an abuse of discretion for the court to conclude from this evidence that Sonya was not under duress.

III. Attorney's Fees and Costs

Sonya requested attorney's fees and costs "in the nature of a sanction" pursuant to Family Code section 271, subdivision (a). The trial court denied her request. Sonya contends this was an abuse of discretion. (See *In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1316.) Sonya concedes, however, "[t]his denial is not inconsistent with the court's denial of Sonya's set-aside motion based on duress." She requests only

that we reverse and remand the attorney's fees issue "[i]f this Court reverses based upon lack of jurisdiction, or upon the erroneous denial of the set-aside motion." Because we affirm on both bases, we affirm the denial of attorney's fees and costs as well.

DISPOSITION

The order is affirmed. In the interest of justice, the parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.